

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSE MANUEL HENRIQUEZ and JOSE
HECTOR FUENTES, on behalf of themselves and
similarly situated employees,

12-CV-6233 (ADS) (GRB)

Plaintiffs,

-against-

KELCO LANDSCAPING INC., KELCO
LANDSCAPING CORP., ELM GENERAL
CONSTRUCTION CORP., KELLY'S CREW,
JOHN KELLY, JOSEPH PROVENZANO,

Defendants.
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DECLARATION OF PETER A. ROMERO IN SUPPORT OF MOTION

Peter A. Romero, an attorney admitted to practice law in the State of New York and the United States District Court for the Eastern District of New York, hereby declares upon information and belief under the penalties of perjury as follows:

1. I am a member of the firm Frank & Associates, P.C., attorneys for the Plaintiffs herein. I submit this declaration to provide biographical information regarding counsel's experience and to place certain exhibits before the Court in support of the Plaintiffs' motion for preliminary approval of the parties' proposed Class Action Settlement.

2. Plaintiffs believe that the proposed Settlement is in the best interests of all members of the proposed Settlement Class. The proposed Settlement is the result of extensive negotiations with the assistance of mediator Martin F. Scheinman, Esq. Based on their evaluation of the facts and the considerable risk, expense and delay inherent in the continued litigation of

this matter, Plaintiffs submit that the proposed Settlement is in the best interest of the class as a whole and should be granted preliminary approval.

3. After conducting a thorough investigation of the facts in this case, which included interviewing opt-in plaintiffs and reviewing payroll records, counsel for the parties engaged in extensive, complex settlement negotiations to resolve this matter. The parties negotiated at arms' length with Mediator Martin F. Scheinman.

4. The parties jointly request that the Court certify for settlement purposes only, a Settlement Class comprised of all persons who are or were employed by Defendants as landscapers and laborers from December 19, 2006 to February 28, 2015.

5. The parties further request that the Court appoint Plaintiff's counsel as Class Counsel, grant preliminary approval of the Settlement Agreement and authorize notice to all Settlement Class Members by delivering to them a notice of the proposed class settlement approved by the Court.

6. The Parties jointly request that the Court schedule a hearing to determine whether the proposed Settlement Agreement is fair, reasonable, and adequate to the Class as a whole (the "Fairness Hearing"), as required by Rule 23(e) of the Federal Rules of Civil Procedure, at the earliest practicable time on or within 120 days after the Notice is mailed.

7. Annexed hereto as Exhibit A is a true and correct copy of the parties' Settlement Agreement.

8. Annexed hereto as Exhibit B is the parties' Proposed Notice of Settlement.

9. Annexed hereto as Exhibit C is Plaintiffs' Proposed Order Granting Preliminary Approval of the Settlement.

10. The attorneys at Frank & Associates, P.C. regularly represent employers and employees in wage and hour matters, including administrative proceedings before the Industrial Board of Appeals. We have represented scores of employees in court cases brought under federal and state wage statutes, most of which have been satisfactorily resolved prior to trial.


11. We regularly advise employers on all areas of employment law, including discrimination, termination and employee discipline, personnel practices and policy audits to ensure compliance with federal, state and local laws that affect the workplace.

12. The undersigned regularly represents employees and employers in the types of claims asserted in this action including cases in which Frank & Associates was appointed class counsel such as *Scaffidi v. I.W. Industries, Inc.*, et al., E.D.N.Y. 05-CV05746 (JS), which asserted claims under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. 2101 et seq. (the “WARN Act”), and *Higueros v. New York State Catholic Health Plan, Inc.*, E.D.N.Y. 07-CV-00418 (ADS) (ETB) a hybrid collective and class action lawsuit brought to recover unpaid overtime wages under the Fair Labor Standards Act, 29 U.S.C. §201 et seq. and the New York Labor Law (See, DE 97).

13. We have successfully represented clients in other complex litigation, including *Feigenbaum v. Summit Health Administrators, Inc.*, 2008 WL 2386168 (D.N.J. June 9, 2008), which asserted claims under the Employee Retirement Income Security Act, 29 U.S.C. §1001 et seq. (“ERISA”) arising from a dispute between an employee health plan and its stop-loss insurer.

14. In sum, Frank & Associates are experienced employment attorneys with a good reputation among the employment law bar and substantial experience prosecuting and settling wage and hour class actions, and are well-versed in wage and hour law and in class action law.

Dated: Farmingdale, New York
March 30, 2015



Peter A. Romero, Esq.